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November 21, 2007

VIA ECFS

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Choice Communications, LLC Request for Confidential Treatment of Ex Parte, Choice Communications, LLC Application for Designation as an Eligible Telecommunications Carrier, CC Docket No. 96-45 (filed January 13, 2005)

Dear Ms. Dortch:

Choice Communications, LLC ("Choice"), through its attorneys, respectfully requests that the Commission treat as confidential and withhold from public disclosure certain information contained in the attached *ex parte*.

On January 13, 2005, Choice filed an application for designation as an eligible telecommunications carrier ("ETC") in its licensed service area throughout the United States Virgin Islands. Choice is filing this *ex parte* in support of its application. In this *ex parte*, Choice identifies, among other things, the number of subscribers that it serves for particular services and information about rates in a proposed interconnection agreement. This information constitutes a trade secret and is commercially sensitive. Choice cannot disclose this information to third parties or competitors without putting itself at a significant competitive disadvantage. Accordingly, pursuant to sections 0.457 and 0.459 of the Commission's rules,¹ Choice requests that the Commission afford confidential treatment to the non-redacted *ex parte*.

The information for which Choice requests confidential treatment constitutes sensitive commercial information that falls within Exemption 4 of the Freedom of Information

¹ 47 C.F.R. §§ 0.457, § 0.459.

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Act ("FOIA").² Exemption 4 allows parties to withhold from public information "trade secrets and commercial or financial information obtained from any person and privileged or confidential-categories of materials not routinely available for public inspection." Applying Exemption 4, the courts have stated that commercial or financial information is confidential if its disclosure will have either of the following effects: (1) impairment of the government's ability to obtain necessary information in the future; or (2) causation of substantial harm to the competitive position of the person from whom the information was obtained.

In the present case, Choice requests confidential treatment of portions of the *ex parte* because it contains trade secrets and commercially sensitive information that Choice does not ordinarily disclose, and does not wish to disclose, to third parties. Disclosure of this information would have substantial adverse competitive consequences for Choice.

Section 0.457(d)(2) of the Commission's rules allows persons submitting materials that they wish to be withheld from public inspection in accordance with Section 552(b)(4) of the FOIA to file a request for non-disclosure. The requirements governing such requests are set forth in section 0.459(b). In accordance with the specifications delineated in that rule, Choice hereby submits the following:

1. IDENTIFICATION OF SPECIFIC INFORMATION FOR WHICH
CONFIDENTIAL TREATMENT IS SOUGHT (SECTION 0.459(B)(1))

Choice seeks confidential information of portions of the attached *ex parte*. The information provided in each of these exhibits constitutes commercially sensitive information that falls within Exemption 4 of the FOIA.

2. IDENTIFICATION OF THE COMMISSION PROCEEDING IN WHICH
THE INFORMATION WAS SUBMITTED OR A DESCRIPTION OF THE
CIRCUMSTANCES GIVING RISE TO THE SUBMISSION (SECTION 0.459(B)(2))

Choice is filing this *ex parte* to supplement its application for designation as an eligible telecommunications carrier filed on January 13, 2005.

3. EXPLANATION OF THE DEGREE TO WHICH THE INFORMATION
IS COMMERCIAL OR FINANCIAL, OR CONTAINS A TRADE SECRET OR IS
PRIVILEGED (SECTION 0.459(B)(3))

The information contained in the attached *ex parte* is commercially sensitive information and trade secrets that Choice does not ordinarily disclose, and does not wish to disclose, to third parties. The information for which Choice seeks confidential treatment contain

² See 5 U.S.C. § 552(b)(4); 47 C.F.R. § 0.457(d).

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commercial information and trade secrets that competitors could use to Choice's detriment or is otherwise confidential information because it pertains to discussions between Choice and a different carrier.

4. EXPLANATION OF THE DEGREE TO WHICH THE INFORMATION CONCERNS A SERVICE THAT IS SUBJECT TO COMPETITION (SECTION 0.459(B)(4))

Choice offers various telecommunications services and broadband Internet services, among others, to consumers in the U.S. Virgin Islands. Although these industries generally are competitive throughout the United States, in the U.S. Virgin Islands these services are dominated by a single ILEC. As a result, it is imperative that the Commission afford confidential treatment to these exhibits such that Choice has an opportunity to compete in the U.S. Virgin Islands

5. EXPLANATION OF HOW DISCLOSURE OF THE INFORMATION COULD RESULT IN SUBSTANTIAL COMPETITIVE HARM (SECTION 0.459(B)(5))

Release of the information for which Choice requests confidentiality would have a significant impact on Choice's commercial operations and would provide its competition with an unfair competitive advantage.

6. IDENTIFICATION OF ANY MEASURES TAKEN TO PREVENT UNAUTHORIZED DISCLOSURE (SECTION 0.459(B)(6))

Choice does not ordinarily disclose information about the size of its customer base or the services that they purchase. In addition, Choice requires all of its employees, agents and contractors to maintain the confidentiality of this information.

7. IDENTIFICATION OF WHETHER THE INFORMATION IS AVAILABLE TO THE PUBLIC AND THE EXTENT OF ANY PREVIOUS DISCLOSURE OF THE INFORMATION TO THIRD PARTIES (SECTION 0.459(B)(7))

The information contained in the *ex parte* is not available to the public and has not previously been disclosed to third parties.

8. JUSTIFICATION OF PERIOD DURING WHICH THE SUBMITTING PARTY ASSERTS THAT THE MATERIAL SHOULD NOT BE AVAILABLE FOR PUBLIC DISCLOSURE (SECTION 0.459(B)(8))

Choice respectfully requests that the Commission withhold the information from public inspection indefinitely. Any disclosure could jeopardize Choice's competitive position if

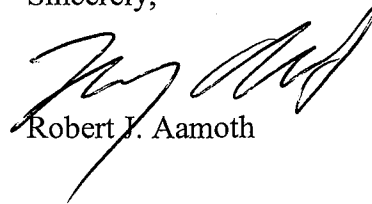
KELLEY DRYE & WARREN LLP

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Page Four

released prior to giving Choice an opportunity to obtain—and maintain—customers in the U.S. Virgin Islands.

Please contact me at (202) 342-8620 if you have any questions regarding this request for confidential treatment.

Sincerely,



Robert J. Aamoth

cc: Jeremy Marcus
Jennifer McKee
Alex Minard
Romanda Williams

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

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November 21, 2007

VIA ECFS (PUBLIC VERSION ONLY)

Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: Choice Communications LLC Petition for Designation as an Eligible
Telecommunications Carrier, CC Docket No. 96-45

Dear Ms. Dortch:

Choice Communications LLC ("Choice"), through its attorneys and in order to ensure an accurate record in this proceeding, hereby responds to Innovative Telephone's ("Innovative") *ex parte* presentation dated October 26, 2007.¹ Innovative claims that the Commission should deny Choice's petition for designation as an eligible telecommunications carrier ("ETC") primarily because, according to Innovative, Choice does not provide any telecommunications services. Contrary to Innovative's claim, which ignores record evidence supported by affidavits, Choice offers and provides various telecommunications services to consumers in the U.S. Virgin Islands, and has done so since it initially sought ETC designation from the Commission in January 2005.² Choice fully satisfies all of the criteria for ETC designation,³ and granting Choice's petition is in the public interest.

¹ Letter to Marlene H. Dortch, Secretary, Federal Communications Commission, from Gregory J. Vogt, Counsel to Innovative Telephone (Oct. 26, 2007) ("Innovative *ex parte*").

² In 2001, Choice filed its ETC petition with the U.S. Virgin Islands, which ultimately denied jurisdiction.

³ Choice will not repeat each of the arguments raised in its petition demonstrating that it satisfies the ETC designation criteria, but instead will focus on certain specific issues raised in Innovative's *ex parte*. Innovative claims that Choice has not satisfied each of

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Choice repeatedly has demonstrated on the record, and supported by affidavits, that it offers and provides telecommunications services to consumers in the U.S. Virgin Islands. In particular, Choice has demonstrated that it provided in 2005 —and continues to provide today —SMR and paging services to consumers throughout the U.S. Virgin Islands.⁴ Currently, Choice provides service *****BEGIN CONFIDENTIAL*****

*****END CONFIDENTIAL*****⁵ Interested subscribers to Choice's SMR service are capable of making outbound and receiving in-bound calls from their handsets, and several of Choice's customers have previously taken advantage of this unique product offering.⁶

In addition to these services, subsequent to filing its petition for ETC designation, Choice began to offer two point-to-point transport (or private line) telecommunications services. Choice currently provides intra-U.S.V.I. private line service *****BEGIN CONFIDENTIAL*****

requirements that the the Commission adopted in a March 2005 order, two months after Choice filed its ETC Petition. *See* Innovative *ex parte* at 4 (citing *Federal-State Joint Board on Universal Service*, Report and Order, FCC 05-46 (Mar. 17, 2007) (stating that the requirements apply prospectively). Choice has made several voluntary commitments in its ETC Petition and supplementary materials in response to Commission request, and fully satisfies all applicable requirements for ETC designation.

⁴ *See* Choice ETC Petition at 11 (stating that Choice provides access to the PSTN on its SMR system); *see also* *Ex Parte* Letter to Marlene Dortch, Secretary, Federal Communications Commission, from Robert J. Aamoth, Kelley Drye & Warren LLP, Counsel to Choice Communications LLC (Sept. 24, 2007) (stating that Choice offers and provides SMR services to consumers in the U.S. Virgin Islands).

⁵ Innovative's assertion that Choice does not provide SMR service rests solely on an affidavit in which an Innovative employee states that he asked three Choice marketing employees many years ago whether Choice provides "wireless telephone" service and was told it did not. The contacted individuals were not aware of Choice's SMR service capabilities or did not connect SMR voice services to "wireless telephone" service as requested by Innovative's consultant. It is not clear what Innovative's employee meant when he referenced "wireless telephone" service. As Choice's CEO attested to in an affidavit attached to Choice's letter of September 27, 2005, Choice indeed offers and provides SMR services to requesting customers today, and it did so at the time its petition was filed in January 2005. *See* Declaration of Joseph Sharp (Nov. 21, 2007). Choice has attached a further affidavit to this letter attesting to the accuracy of the information contained herein. *See id.*

⁶ *See id.*

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*****END CONFIDENTIAL*****⁷ Both services are telecommunications services as defined in section 3 of the Act.

For all four telecommunications services, Choice includes the revenues on its relevant Form 499 filings and contributes to the federal Universal Service Fund while paying various FCC fees.

Choice's decision not to execute the proposed interconnection agreement with Innovative has no bearing on whether Choice is a telecommunications carrier or whether it satisfies the criteria for ETC designation. Choice did not execute the interconnection agreement for various reasons, not the least of which is that it contained a prohibitively high—and clearly unreasonable—reciprocal compensation rate in the amount of *****BEGIN CONFIDENTIAL***** *****END CONFIDENTIAL***** This rate is far in excess of any reasonable reciprocal compensation rate and well above the industry average.⁸

It is in the public interest to grant Choice's ETC petition. While mobile competition exists in the U.S. Virgin Islands, coverage is hardly universal or even substantial. Innovative and Choice are the only significant providers of fixed services, and Choice is the only significant provider of wireless fixed services. Innovative benefits from universal service support and local tax incentives yet consumers complain that it continues to provide poor quality phone service and at high prices.⁹ Granting Choice's petition will enable Choice to present a much-needed broad-based competitive alternative to obtaining service from Innovative. It should be emphasized that Choice's licensed service area encompasses the entire U.S. Virgin Islands – and indeed can reach certain areas that Innovative does not serve well, thereby uniquely positioning Choice to provide a high-quality and reasonably priced alternative to the local telephone services provided by Innovative.¹⁰ As the record shows, it is particularly important to have a robust fixed wireless network to complement Innovative's wireline network to ensure that

⁷ Choice's intra-U.S.V.I. private line subscribers include businesses and governmental organizations in the U.S. Virgin Islands.

⁸ See, e.g., *Developing a Unified Intercarrier Compensation Regime*, Comments of the Supporters of the Missoula Plan, CC Docket No. 01-92, Att. 1-6, at 3 (filed Oct. 25, 2006) (noting that the average reciprocal compensation rate for local voice traffic ranges from 0 cents per minute to 0.3 cents per minute).

⁹ Although the majority of the letters are unsigned, several consumers filed *ex parte* notices in this docket in support of Choice's ETC Petition. See Shaun A. Pennington, *Vitelco Executive Says 'We have a Lot of Work to Do,'* St. Thomas Source, June 13, 2005.

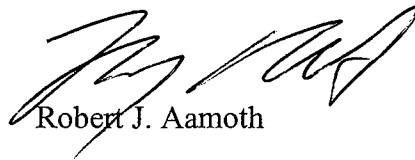
¹⁰ See Shaun A. Pennington, *Vitelco Executive Says 'We have a Lot of Work to Do,'* St. Thomas Source, June 13, 2005 (stating that there are certain areas of the U.S. Virgin Islands that Innovative does not serve well and that Innovative did not have enough lines to serve interested customers).

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recovery from hurricanes and other disasters occurs as quickly and efficiently as possible. Choice would emphasize that it is interested in obtaining funds from both the high cost and low income programs to assist it in providing consumers in the U.S. Virgin Islands a greater choice in service providers at reasonable prices.

Please contact me at (202) 342-8620 if you have any questions regarding this filing.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. J. Aamoth', is written over the typed name.

Robert J. Aamoth

Counsel to Choice Communications LLC

cc: Jeremy Marcus (via email)
Jennifer McKee (via email)
Alex Minard (via email)
Romanda Williams (via email)

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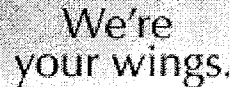
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Vitelco Executive Says 'We Have a Lot of Work to Do'

by Shaun A. Pennington

June 13, 2005 - Dave Sharp, president and chief executive officer of the V.I. Telephone Co., said Monday night Vitelco, also known as Innovative Telephone, is not happy with the level of service the company is providing. "We understand that we have a lot of work to do."

He was not the only one to express those sentiments.

Speaking at a meeting of the Coral Bay Community Council, Sharp said aging equipment and increasing demands for service - especially on St. John - have left the company behind on new installations and repairs.

Several of the two-dozen people filling the meeting room at John's Folly Learning Institute told stories of waiting more than two years to have a phone installed - many still didn't have land phones - or suffering months, even years, without reliable phone service while still being billed. Several said they had given up trying to get help after waiting hours for a customer service representative to take their call -- only to be told the problem would be fixed, when it wasn't, or that they would call back, and never did.

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"What do people do when they feel the standard ways of getting help aren't working?" asked Sharon Coldren, president of the Coral Bay group.

One of the answers Sharp offered was to "Call Tom Dunn." Dunn, who is the public relations officer for the company, was also at the meeting. He gave out his number and told the group to call him directly at 715-8643. Later a list was passed around for people to put down their names, problems and phone numbers, though several still don't have phones - and they would get attention.

When asked specifically if Vitelco had enough lines and switches to accommodate St. John's needs, Sharp said, "No. This island is growing ... we don't have enough lines for everybody who builds a house."

Candid though it was, most of the two dozen people in attendance didn't find that answer acceptable.

Jean Cottrell, an East End resident, said that everyone has a right to basic phone service.

"You are the only company. We are entitled to phone service."

She said East Enders have been left helpless after a couple car accidents - one a fatality - when time was wasted trying to get to someone who had a land line and could call for help.

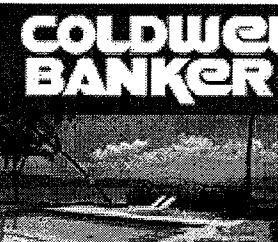
There are large areas of St. John, especially in Coral Bay and the East End, where cell phones don't work.

Alvis Christian, deputy director of the St. John office of the V.I. Territorial Emergency Management Agency, said from his perspective at VITEMA, "It's a nightmare for us here on St. John."

"There's nothing I can say to make you happy," Sharp said, "because you've had shitty service for x number of months."

But for many at the meeting it was more than months and more than just bad phone service.

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People complained of not being able to get through to the service center - getting busy signals or a message that said the "mail box" was full.

Others complained of constantly getting a message, "All circuits are busy now," which Sharp blamed on the cell phone providers and the long distance carries, who he said didn't have enough circuits.

But one phone customer, Pam Gaffin, claimed that when queried the other carriers told her Vitelco didn't have any circuits to give them.

Sharp said, "That's not true. I'll challenge them on that." He also said that getting the "your special feature code has not been accepted" message was a combination of the new added features interfacing with old equipment and also because people start dialing before having a true dial tone.

"I don't have any special features on my phone," Carey Chapin said.

Sharp responded that it could be an anomaly on her line.

"Then I've had an anomaly in my system for five years," Chapin said, also voicing the often-heard complaint about her phone going dead whenever it rains.

Sharp had explained earlier that many of the old phone lines have paper insulation. "Water plays havoc with those," he said.

In fact he spoke of a recent water-related problem on St. Croix that left hundreds of residents and businesses without phone service for more than a week. It was "our worst nightmare," Sharp said.

One resident asked why the company didn't hire more people to get the work done, "Is it a money problem?"

Sharp said the problem was trying to "manage" too many work crews at the same time.

Gaffin pointed out that Vitelco receives money from the Universal Service Fund "to provide rural service."

Vitelco gets what amounts to about \$20 per phone line -- more than \$12 million a year -- from the USF, a fund that is financed by all rate payers across the nation - including Virgin Islanders - to guarantee that all Americans have access to phone lines.

Sharp said, "We're trying to provide dial tone. USF funds are for basic service."

The tenor at Monday night's meeting would suggest that many feel they are not getting that.

Back Talk

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Simmonds Pleads Guilty to Embezzlement, Faces 20 Years in Prison

Former government aide Alric V. Simmonds has accepted an open plea agreement that could put him in jail for 20 years on charges of embezzlement, conversion of government funds and grand larceny.

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)

Choice Communications LLC)

Petition for Designation as an Eligible)
Telecommunications Carrier in the)
United States Virgin Islands)
_____)

CC Docket No. 96-45

DECLARATION OF JOSEPH SHARP

My name is Joseph Sharp. I am the Chief Executive Officer of Choice Communications LLC ("Choice"). My business address is 9719 Estate Thomas, St. Thomas, Virgin Islands 00802. I provide this Declaration in compliance with the requirements of Section 1.16 of the Federal Communications Commission's (the "Commission") rules, 47 C.F.R. § 1.16.

Under penalty of perjury, I hereby declare that the following is true and correct to the best of my knowledge and belief:

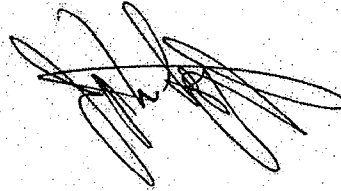
1. On January 13, 2005, Choice filed a Petition for Designation as an Eligible Telecommunications Carrier (hereinafter referred to as "ETC Petition").

2. I am filing this declaration in support of Choice's attached *ex parte* letter, which provides additional information in support of its ETC Petition. Specifically, the purpose of my declaration is to confirm that Choice offers and provides telecommunications services, including, without limitation, SMR, paging, and point-to-point (both intra island and international private line services) services, to customers in the U.S. Virgin Islands.

3. I have reviewed the attached supplement to Choice's ETC petition and the facts discussed therein are true and correct to the best of my knowledge.

IN WITNESS WHEREOF, the above-mentioned corporation has caused this instrument to be executed on its November 21, 2007.

Choice Communications LLC

A handwritten signature in black ink, appearing to read 'Joseph Sharp', is written over a horizontal line.

By: _____
Joseph Sharp
Chief Executive Officer